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7 **UNITED STATES DISTRICT COURT**  
**WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

8 NORTHWEST LABORERS-EMPLOYERS  
9 HEALTH & SECURITY TRUST, WESTERN  
10 WASHINGTON LABORERS-EMPLOYERS  
11 PENSION TRUST, NORTHWEST  
12 LABORERS-EMPLOYERS TRAINING  
13 TRUST, and WASHINGTON AND  
14 NORTHERN IDAHO DISTRICT COUNCIL  
15 OF LABORERS

Plaintiffs

v.

PENHALL COMPANY

Defendant

NO.

COMPLAINT FOR BREACH OF  
COLLECTIVE BARGAINING  
AGREEMENT

16 COME NOW PLAINTIFFS, and for their cause of action, allege as follows:

17 1. Plaintiffs Northwest Laborers-Employers Health & Security Trust, Western  
18 Washington Laborers-Employers Pension Trust, and Northwest Laborers-Employers Training  
19 Trust (Trusts) are joint labor-management employee benefit trusts created pursuant to §  
20 302(c)(5) of the Labor-Management Relations Act (the Act), 29 U.S.C. § 186(c)(5) and bring  
21 this action in accordance with §§ 502(d)(1), 502(a)(3) and 515 of the Employee Retirement  
22 Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq.

COMPLAINT FOR BREACH OF  
COLLECTIVE BARGAINING AGREEMENT—1

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1           2. Plaintiff Washington and Northern Idaho District Council of Laborers and its affiliated  
2 Union locals (Union) is a labor organization that has its principal office located at 12101  
3 Tukwila International Blvd., Ste. 300, Seattle, Washington.

4           3. Defendant Penhall Company (Employer) is engaged in business within the jurisdiction  
5 of this Court, and such business affects commerce within the meaning of § 301(a) of the Act, 29  
6 U.S.C. § 185(a).

7           4. Jurisdiction is conferred on this Court by § 301(a) of the Act, 29 U.S.C. § 185(a) and  
8 §§ 502(a)(3) and 502(e)(2) of ERISA, 29 U.S.C. § 1132(a)(3) and § 1132(e)(2).

9           5. At all times material the Employer and the Union and its affiliated Locals were parties  
10 to a collective bargaining agreement (Labor Agreement) and Trust Agreements, excerpted  
11 material parts of which are set forth as Exhibits A and B, respectively, to this Complaint.  
12 Plaintiff Trusts are third-party beneficiaries to the Labor Agreements.

13           6. The terms of the Trust Agreements, and ERISA, 29 U.S.C. §§ 1027 and 1059, grant the  
14 Trusts the authority to review the payroll records of the Employer to verify the accuracy of the  
15 Employer's reporting of bargaining unit hours worked by the Employer's employees, and to  
16 verify the corresponding required fringe benefit payments to the Trusts.

17           7. Pursuant to the authority granted in the Trust Agreements, Plaintiffs requested that the  
18 Employer submit to an examination of its payroll records to determine if the Employer has  
19 correctly reported hours and paid fringe benefit contributions, dues, and other wage deductions  
20 on behalf of its laborer-classification employees. The Employer did not respond to requests from  
21 Plaintiffs' Accountant (Anastasi, Moore & Martin, PLLC) for payroll audit (see June 10, 2019  
22 letter from Accountant, attached as Exhibit C), or to two subsequent letters from Plaintiffs'  
attorney.

1           8. The Employer has failed to abide by the terms and conditions set forth in the Trust  
2 Agreements by refusing to produce the requested payroll records to the Trusts. Plaintiffs believe  
3 the Employer has failed to abide by the terms and conditions set forth in the Labor Agreements  
4 and the Trust Agreements and is delinquent in the payment of fringe benefit contributions, dues,  
5 and other wage deductions in unknown amounts from July 2013 through current, which are due  
6 and payable under the terms of the Labor Agreements and the Trust Agreements. The  
7 Employer's failure to pay is also a violation of § 515 of ERISA, 29 U.S.C. § 1145.

8           9. The Employer's failure to produce its payroll records for inspection and to pay fringe  
9 benefit contributions, dues, and other wage deductions which continue after the filing of this  
10 Complaint violates the Labor Agreements and the Trust Agreements. The Employer's failure to  
11 pay is also a violation of § 515 of ERISA, 29 U.S.C. § 1145.

12           10. The full extent of the Employer's delinquency in the payment of its required fringe  
13 benefit contributions, dues and other wage deductions to the date of this Complaint is unknown  
14 at this time and will be determined by an examination of the Employer's payroll records, which  
15 examination is authorized by the Trust Agreements, ERISA, 29 U.S.C. §§ 1027 and 1059, and  
16 controlling Federal court decisions.

17           11. The continuing failure of the Employer to produce its payroll records for review, to pay  
18 contributions, dues, and other wage deductions, and to file monthly contribution report forms  
19 makes the full extent of the Employer's delinquency uncertain and it will be determined at the  
20 time of trial.

21           12. Under the terms of the Labor Agreements and Trust Agreements to which the  
22 Employer is bound, the Employer is also obligated to pay all liquidated damages in the amount

1 of 15 percent (15%) of the delinquent contributions owing and interest computed at the rate of 15  
2 percent (15%) per annum on all contributions owing, as well as costs and expenses incurred,  
3 including reasonable attorney fees.

4 13. If judgment is entered by default, a reasonable attorney's fee as of the date of this  
5 Complaint is \$2,000.00.

6 WHEREFORE, Plaintiffs pray for the following relief:

- 7 (a) Judgment against Defendant Penhall Company representing contributions, dues,  
8 and other wage deductions, liquidated damages, and interest in an amount to be  
9 determined at the time of trial;
- 10 (b) All costs and attorney fees incurred; and
- 11 (c) Such other relief as the Court deems just and equitable.

12 DATED August 7, 2019

13 s/ Mary L. Stoll  
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